

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO,
LOCAL UNION NO. 98

and

LUCENT TECHNOLOGIES, INC.

Cases 4-CD-1032
4-CD-1136
4-CD-1138
4-CD-1149

COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO

4-CD-1135

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Jonathan D. Newman, Esq., of Washington, DC,
for the Respondent.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on February 1 and 2, 2005, in Philadelphia, Pennsylvania, pursuant to a Complaint and Notice of Hearing (the complaint) issued by the Regional Director for Region 4 of the National Labor Relations Board (the Board) on November 29, 2004.¹ The complaint, based upon charges filed by Lucent Technologies, Inc. (the Employer or Lucent) and Communications Workers of America, AFL-CIO (CWA or Charging Party) allege that International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 98 (Local 98 or Respondent), has engaged in certain violations of Section 8(b)(4)(D) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

¹ All dates are in 2004 unless otherwise indicated.

Issues

The complaint alleges that the Respondent by means proscribed by Section 8(b)(4)(D) of the Act attempted to force or require Lucent to assign the work of installing PCS CDMA minicell equipment and related wiring to employees represented by Respondent rather than to employees who are members of or represented by CWA.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Lucent, CWA, and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

Lucent, a Delaware corporation, is engaged in the installation of telecommunications equipment, and has performed services in connection with its business operation in excess of \$50,000 outside the State of Delaware. Respondent admits and I find that Lucent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent and CWA are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

The Employer has a contract with Sprint Communications (Sprint) to install PCS CDMA minicell equipment for Sprint's customers. Sprint purchases the minicell equipment from Lucent. During the summer of 2000, Lucent was scheduled to install minicell equipment at a Sprint project at the First Union Center, a large convention hall in Philadelphia, Pennsylvania. Lucent assigned the minicell installation work to its communication equipment installers who are represented by CWA. Lucent was scheduled to begin the installation work on June 14, 2000. At all material times, Lucent and CWA have been parties to a collective bargaining agreement covering the Employer's installers.

Sprint hired Specialty Constructors as the general contractor on the First Union Project. Specialty subcontracted the electrical work to Adams Electric which employed members of Local 98. Sprint was not aware of the agreement between Specialty and Adams. Lucent does not have a contract with Local 98.

On June 9, 2000, when the minicell equipment was delivered to the jobsite, the Employer's installers were there to move it from the loading dock to the room where it would be installed. However, their supervisor instructed them not to move it. Instead, Adams Electric employees represented by Local 98 moved the equipment. After the equipment had been moved, the Employer's installers noticed that someone had written "Lucent scabs" and other derogatory comments on several of the boxes. Thereafter, Joseph Rowland, an electrician employed by Adams Electric and Local 98's job steward at the First Union Center jobsite asked

² The General Counsel's unopposed motion to correct the transcript, dated February 17, 2005, is granted

to see the Employer's installers' union cards or proof that they were paying union dues. Rowland advised the Employer's installers that the First Union Center had promised the disputed work to Local 98. The Employer's installers secured the equipment and left the jobsite.

5 On June 13, 2000, CWA representative Bruce Davis met with Local 98 Business Agent Larry DeISpechio. At some point during this meeting, DeISpechio stated that Local 98 had been told that it would be assigned all the cabling work at the First Union Center. DeISpechio rejected Davis' suggestion that CWA and Local 98 share the disputed work.

10 Thereafter, the First Union Center decided because of Local 98's contract with them, Local 98 would have to perform the disputed work. As a result, Sprint hired an outside contractor to come to the jobsite and instruct the Local 98-represented electricians on how to install the minicell equipment. After Local 98-represented electricians completed the installation of the minicell equipment the Employer's installers were assigned to perform the integration work and downloaded the software. The work in dispute was completed by June 16, 2000.

15 On April 30, 2003, pursuant to Section 10 (k) of the Act, the Board issued a Decision and Determination of Dispute in Case 4-CD-1032 (338 NLRB 1118), that held "Employees of Lucent Technologies, Inc. represented by Communications Workers of America, AFL-CIO are entitled to perform the work of installing PCS CDMA minicell equipment and related wiring installed by Lucent Technologies, Inc., wherever the geographical jurisdiction of International Brotherhood of Electrical Workers, Local Union No. 98 and Communications Workers of America, AFL-CIO coincide."

25 B. Positions of the Parties

The General Counsel, Employer, and CWA contend that by its actions the Respondent has violated Section 8(b)(4)(D) of the Act. They point to the fact that the Respondent has a proclivity to violate the Act and in support cite the Board's decisions in *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 226 (1997), and *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB 230 (1997).³

30 Local 98 argues that the record does not support a conclusion that reasonable grounds exist to find that it violated the Act. In this regard, it denies that it threatened to engage in picketing unless the installation of the minicell equipment was assigned to employees who were members of, or represented by, Respondent rather than to employees who were members of, or represented by, CWA. While the Respondent admits that it engaged in picketing as alleged in the complaint, it asserts that it was for legitimate area standards informational purposes only.

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50 ³ It is noted in the Board's case 4-CD-1079, *International Brotherhood of Electrical Workers, Local Union No. 98 and Swartley Brothers Engineers, Inc.*, 337 NLRB 1270 (2002) at fn. 7, a number of cases are cited that underscores Local 98's proclivity to violate the Act and engage in wrongful conduct in order to obtain disputed work.

C. The 8(b)(4)(D) Allegations

5 1. The alleged June 13, 2000, threat

a. Facts

10 The General Counsel alleges in paragraph 6 of the complaint that on or about June 13, 2000, Respondent, by Larry DelSpechio, at the First Union Center site, threatened that Respondent would engage in picketing unless the PCS CDMA minicell equipment work and related wiring was assigned to employees who were members of, or represented by Respondent rather than to employees who were members of, or represented by, CWA.

15 Joseph Weeks, an employee of Lucent, was assigned to the First Union Center in June 2000 to install PCS minicell equipment to accommodate the cellular telephone requirements of the Republican National Convention. On June 9, 2000, truck drivers employed by Lucent delivered the telecommunications equipment to the Center's loading dock which normally would have been moved to the installation location by the Employer's employees. The First Union
20 Center's management, however, determined that Local 98 represented employees would move the equipment to the installation location. Upon completion of the equipment being moved, Weeks observed that the term "Lucent scabs" and other derogatory remarks had been written on the outside of the unopened equipment boxes. Weeks testified that Respondent's job steward Joseph Rowland, informed him that the First Union Center promised the Respondent all
25 the work from the cellular companies that would be installed at the Center. Weeks immediately called his boss, Scott Heim, to apprise him what Rowland said.

On June 13, 2000, Weeks and Heim returned to the Center to begin the installation of the minicell equipment. The manager of the First Union Center, due to a dispute as to who was
30 going to install the minicell equipment, sought a meeting between representatives of Respondent and the CWA. Accordingly, Weeks telephoned CWA representative Bruce Davis to come to the First Union Center and attend a meeting because Local 98 would not permit the employees of Lucent to complete the installation of the minicell equipment. In due course, a one on one meeting took place between Local 98 Business Agent Larry DelSpechio and Davis.
35 According to Davis, DelSpechio said, "How can I let you guys do the work. I can't let you guys do the work. We will throw up a picket."⁴ Davis offered to share the work but DelSpechio refused. Immediately after his conversation with DelSpechio, Davis met with Heim and Weeks who inquired what took place during the meeting. Davis informed both individuals that DelSpechio would put up a picket line if Local 98 did not get the work. The First Union Center
40 ultimately decided, based on their signed contract with Local 98, that the installation of the minicell equipment should be completed by Local 98 represented employees.

DelSpechio admitted that he attended a meeting on June 13, 2000, at the First Union Center. He has no recollection of meeting with any CWA representative that day and therefore
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4 Davis gave an affidavit to the Board on June 15, 2000 that addressed this conversation (R Exh. 1). Davis stated in the affidavit that the Local 98 Business Agent that he spoke with was named Daren and after Davis said, "Well what if we just go ahead and do it ourselves", the Business Agent said, "Well, then I would have to stop you." The affidavit does not mention that
50 the Business Agent stated he would picket the job site if Local 98 employees were not assigned and permitted to do the installation of the minicell equipment.

asserts that he did not have a conversation about sharing the work of installing the minicell equipment or of threatening to picket if the disputed work was not assigned to employees represented by Respondent. He does remember attending a discussion in a group setting with the manager of the First Union Center being present. During that meeting DelSpechio admits that he told those in attendance that he would protest if the work of installing the minicell equipment was not assigned to the Respondent based on their signed contract with the First Union Center.

b. Discussion

DelSpechio's recollection of what took place on June 13, 2000, is vague and not persuasive. On the other hand, Davis and Heim testified that they were introduced to DelSpechio at the First Union Center on June 13, 2000, and Davis's testimony that he engaged in a one on one conversation with DelSpechio has a ring of truth to it. Both Heim and Weeks also testified that immediately after Davis completed his conversation with DelSpechio, he informed them that DelSpechio threatened to picket if the Respondent was not assigned the disputed work.

The Respondent argues that Davis affidavit, given two days after the conversation with the Business Agent, did not correctly identify DelSpechio by name or state that he threatened to picket if the work in dispute was not assigned to Local 98. I find, however, based on Davis's demeanor in addition to the independent credible testimony of Heim and Weeks, that DelSpechio did threaten Davis and the Employer either by threatening to picket or by other means ("I would have to stop you") that Local 98 intended to obtain the work of installing the PCS minicell equipment at the First Union Center.

2. The events of April 6-Delaware Avenue

a. Facts

The General Counsel alleges in paragraph 7(b) of the complaint that the Respondent engaged in picketing at the Delaware Avenue jobsite in support of its demand for the work in dispute.

Weeks testified that he was assigned to install mod-cell equipment on the roof of a new office building being erected on Delaware Avenue on April 6. Present on the job site that morning were installers employed by Lucent, crane operators and riggers that were hired to move the telecommunications equipment to the roof and a number of trucking equipment operators that were in the process of delivering the equipment. Weeks was approached by two individuals who identified themselves as Business Agents for Local 98. One of the Business Agents, Michael Hnatkowsky, asked Weeks if he had a permit to complete the electrical work. Weeks replied that he did not need such a permit. Hnatkowsky then inquired if Weeks was being paid \$32 per hour. Weeks informed Hnatkowsky that he and the other employees were making roughly \$32 per hour. The second Business Agent, Raymond Della Vella, then proceeded to his car in the parking lot and put a picket sign over his head. The picket sign stated, "Notice, Lucent (written by hand) Contractor is destroying Building Industry Standards, We Protest This Company, Not Observing Wage and Benefit Standards, Local Union 98, I.B.E.W." (GC Exh. 16 and 17).⁵ After about one half hour another individual came to picket and

⁵ Weeks identified that the individual in the exhibits was Respondent Business Agent Raymond Della Vella who he had been introduced to at the job site on April 6.

Della Vella left the job site. Since the picket continuously patrolled the jobsite, the Union crane operators and riggers refused to cross the picket line and the mod-cell equipment was not installed on that day.

5 Later that day, Weeks telephoned Hnatkowsky and inquired how he could resolve the problem of having pickets at the jobsite. Hnatkowsky gave Weeks the telephone number of Respondent's lawyer and told him if it can be shown that the employees of Lucent make \$32 per hour in wages then the picket would be removed.

10 Hnatkowsky testified that after he left the Richmond Avenue jobsite on his way to attend a meeting in his office he passed the Delaware Avenue jobsite and noticed a large crane and trucks delivering telecommunication equipment. Hnatkowsky pulled into the parking lot and approached several individuals who identified themselves as employees of Lucent. Hnatkowsky asked one of the employees if he was making \$32 per hour in wages and the employee said
15 close to that. Hnatkowsky then telephoned Respondent lawyer William Josem to inquire whether the information he had obtained was sufficient to picket the jobsite and enforce legitimate area standards concerns of Local 98. Hnatkowsky informed Josem that since most of these jobs are completed in a day or less there was not enough time to write a letter to Lucent to formally inquire if they paid installers less than \$32 per hour. Based on this representation
20 and the response of the employee that he was making close to \$32 per hour in wages, Josem authorized Local 98 to picket the jobsite protesting area standards. Hnatkowsky then informed Della Vella to put on a picket sign and patrol the jobsite.

25 Josem testified that he had a telephone conversation with Hnatkowsky on the morning of April 6. During that conversation, Hnatkowsky apprised him that there was not enough time to send a letter to Lucent that would confirm the representation of employees on the jobsite that they made less or close to \$32 per hour. Based on the information that Hnatkowsky had received from the employees of Lucent, Josem authorized Local 98 to put up an area standards picket. Later that day, Josem testified that he had a conversation with Weeks who confirmed
30 that employees of Lucent did not make \$32 per hour in total wages. Shortly after talking with Weeks, Josem had a telephone conversation with Lucent Operation Manager Jerry Delaney about the picketing at one of the jobsites that employees of Lucent were working on. During that conversation, Josem asserts that Delaney confirmed that employees of Lucent were paid less than \$32 per hour in base wages. Delaney, while confirming that he did have a telephone
35 conversation with Josem in April 2004, testified that Josem informed him that Local 98's total wage and benefit package was around \$52 per hour but that Delaney never told Josem that the employees of Lucent total wage and benefit package was less than \$52 per hour. It is noted that the telephone calls between Josem, Weeks and Delaney, took place after the picketing had occurred on April 6.

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b. Discussion

Respondent argues that the picketing engaged in at the Delaware Avenue jobsite was solely to protest area standards and in no way was an attempt to force Lucent to assign the
45 installation of the PCS minicell equipment to members of Respondent rather than to employees represented by CWA.

I reject this argument based on the information that Hnatkowsky received from Weeks. In this regard, Weeks stated that he made close or roughly \$32 per hour, a figure that would
50 have satisfied Local 98's concern of protecting industry standards and should have precluded the necessity of placing a picket on the jobsite. I note that Respondent made no effort to independently confirm this information before it picketed the jobsite and at no time did it verify

the base wages earned by employees of Lucent or what the total package of wages and benefits were for comparison purposes with the package earned by employees represented by Local 98. Indeed, John Brerton, the Labor Relations Manager for Lucent credibly testified that he never received a formal inquiry from Respondent regarding a breakdown of base wages and benefits paid to employees of Lucent. However, if such an inquiry had been made he would have provided information that the total wage and benefit package provided to employees of Lucent was \$52.80, broken down to \$26.70 in average wages and \$26.10 in benefits, a figure comparable to the wage and benefit package provided employees represented by Respondent. Likewise, I note that Local 98 never formally made a request of CWA to obtain a copy of its collective bargaining agreements with Lucent that would have provided the wage and benefit information. *Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.)*, 250 NLRB 416, 419 (1980) (finding that a union's lack of investigation into wages paid by the employer is evidence of pretext for unlawful picketing).

Lucent Operations Manager, Michael Galos, testified that he talked to Josem on April 6 in an effort to square things away and put a halt to the picketing at the jobsite. For this purpose, Galos faxed two agreements that had been negotiated in 2000 and 2001 between the national Presidents of Respondent and CWA to reduce or eliminate jurisdictional disputes concerning the performance of telecommunications work (GC Exh. 19 and 20). Josem confirmed that he received these documents and forwarded them to Hnatkowsky for his review. The Respondent argues that the agreements are not binding because the installation of PCS minicell equipment involves the performance of high voltage electrical work that is not covered and therefore, it was privileged to engage in legitimate area standards picketing.

Contrary to this position, CWA official George Kohl testified that he was involved in preliminary discussions in 2000 and 2001 regarding the negotiation of these agreements between both National Unions. He, along with other representatives from both Unions, prepared a chart of wage rates for employers in the Telecommunications industry that would meet the wage and benefit minimum standard for the industry.⁶

The understanding between both Unions provides that Telecommunications is defined as wireless and cabling systems and equipment used for the transmission, switching and reception of Voice, Data and Video signals, including backbone and horizontal wiring systems, related communications closets, equipment rooms, and associated equipment, devices and materials including telecommunications cable tray (GC Exh. 20, Item 2).

I note that the Board in the subject 10(k) Decision and Determination of Dispute found that representatives of Local 98 claimed all of the cabling work at the First Union Center which included working in equipment rooms that contained communications closets. Testimony by employees of Lucent confirms that the installation of PCS minicell and mod-cell equipment and related wiring appears to fit within the definition of Telecommunications negotiated by the CWA

⁶ A wage and employee benefit package which covers telecommunications work established in collective bargaining agreements between CWA or IBEW on the one hand, and AT&T, Lucent Technologies, Avaya, Bell Atlantic, Bell South, SBC, U.S. West or other "Bell" company on the other hand, shall be deemed to satisfy the minimum standard under this Agreement for geographic areas where such collective bargaining agreements are in force. In no instance shall the minimum standard be less than the wage and benefit package established in any such agreement, unless CWA and IBEW agree (GC Exh. 19, Item 2b).

and IBEW. Thus, based on the above discussion, further doubt is cast on the Respondent's argument that its sole purpose of picketing the Employer's jobsites was to enforce area standards wages and benefits.

5 3. The events of April 6-Richmond Avenue

a. Facts

10 The General Counsel alleges in paragraph 7(b) of the complaint that the Respondent engaged in picketing on April 6, at the Richmond Avenue jobsite in support of its demand for the work in dispute.

15 Brett Mayo, an installer for Lucent, testified that he was assigned to swap PCS minicell equipment and install a mod-cell with higher capacity on the roof of a furniture building on Richmond Avenue. Two individuals arrived at the jobsite on the morning of April 6, identified themselves as Business Agents for Respondent, and inquired of Mayo whether he had a permit to complete the electrical work on this job. Mayo informed the Business Agents that he was not aware that a permit was necessary to complete the work. One of the Business Agents then asked Mayo if he made \$32 per hour in base wages. Mayo replied no. A few minutes later both
20 Business Agents appeared with picket signs and the riggers and crane operators refused to cross the picket line. Therefore, no work was performed that day as it was not possible to remove the old minicell equipment from the roof area or hoist up the new equipment. Mayo identified Della Vella as was one of the pickets who appeared in photographs (GC Exh. 16 and 17).

25 Janis Wohanka, an employee of Mack Tech Engineering and Consulting, coordinates the simultaneous arrival of manpower and the telecommunications equipment for installation by employees of Lucent at its jobsites. On April 6, Wohanka was present at the Richmond Avenue jobsite to coordinate the installation and swap of the PCS minicell equipment when an individual approached her and asked what was going on. Wohanka informed the individual that they were replacing cellular equipment on the roof of the building. The individual asked Wohanka whether they had electrical permits to perform the work. Wohanka replied that we have done many of these equipment swaps without obtaining any permits. The individual stated that if we were doing any type of electrical work, then that work belonged to the electrical workers. The
30 individual then proceeded to his car and returned to the jobsite wearing a picket sign. Wohanka identified Della Vella as the individual she spoke with by testifying that he was the person in the pictures wearing the picket sign (GC Exh. 16 and 17). Wohanka further stated that Della Vella did not ask her any questions about wages earned by employees that were working on the jobsite.

40 Hnatkowsky testified that he received a telephone call from Della Vella around 8 a.m. on April 6 to come to the Richmond Avenue jobsite as it appeared that a number of employees were prepared to engage in electrical work based on the presence of large cranes and a number of communications vehicles. Upon arriving at the jobsite, Hnatkowsky and Della Vella spoke to a group of employees and inquired if they were making \$32 per hour in base wages. One of the employees said they were making less than \$32 per hour in base wages. Della Vella also asked the employees whether they had a City permit to install the electrical equipment. Hnatkowsky then called Josem to confirm that this was an area standards issue and based on the response of one of the employees that they made less than \$32 per hour in base wages
50 whether there was cause to place a picket on the jobsite. Josem gave the necessary authorization and both Hnatkowsky and Della Vella picketed the jobsite for approximately one hour.

b. Discussion

As discussed above, Hnatkowsky and Della Vella admit that they took no further efforts other than talking to Josem and one of the employees on the jobsite who said that he made less than \$32 per hour in base wages before the picket line was established. Additionally, Della Vella denied that he had any conversation with a woman on April 6 at the Richmond Avenue jobsite. I reject Della Vella's testimony as Wohanka was positive about meeting Della Vella and identified him as the individual in the pictures with the picket sign that engaged her in conversation. I note that Della Vella made no inquiries about wages or benefits with Wohanka but did inquire as to whether she had obtained electrical permits to complete the installation work. Likewise, Della Vella informed Wohanka that if electrical work was being performed, it belonged to the electrical workers.

4. The events of April 8-West Montgomery Avenue

a. Facts

The General Counsel alleges in paragraph 7(c) of the complaint that the Respondent engaged in picketing on April 8, at the West Montgomery Avenue jobsite in support of its demand for the work in dispute.

Mayo testified that he was assigned to remove certain cellular equipment from the roof of an apartment building and swap it with enhanced equipment on April 8. Upon arriving at the West Montgomery Avenue jobsite that day he observed a number of pickets were present wearing similar signs to what he observed at the Richmond Avenue jobsite on April 6. As a result of the pickets, the union represented crane operator and rigger employees refused to work and no installation of the mod-cell equipment was undertaken that day.

b. Discussion

The Respondent does not dispute that it picketed the West Montgomery Avenue jobsite on April 8. It argues that Mayo acknowledged on April 6 at the Richmond Avenue jobsite that he and other employees of Lucent made less than \$32 per hour in base wages and therefore, the picketing on April 8 at West Montgomery Avenue was legitimate area standards informational picketing.

5. The events of April 8-City Line Avenue

a. Facts

The General Counsel alleges in paragraph 7(c) of the complaint that the Respondent engaged in picketing on April 8, at the City Line Avenue jobsite in support of its demand for the work in dispute.

Weeks testified that he was assigned to remove certain cellular equipment from the roof of an apartment building and swap it with enhanced equipment on April 8. Upon arriving at the City Line Avenue jobsite that day he observed a number of pickets were present wearing similar signs to what he observed at the Richmond Avenue jobsite on April 6. As a result of the pickets, the union represented crane operator and rigger employees refused to work and no installation of the minicell equipment was undertaken that day.

b. Discussion

5 The Respondent does not dispute that it picketed the City Line Avenue jobsite on April 8. It argues that Weeks acknowledged on April 6 at the Delaware Avenue jobsite that he and other employees of Lucent made roughly \$32 per hour in base wages and therefore, the picketing on April 8 at City Line Avenue was legitimate area standards informational picketing.

6. The alleged August 31, threat

a. Facts

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15 The General Counsel alleges in paragraph 7(a) of the complaint that on or about August 31, Della Vella, at the Packer Avenue jobsite threatened that Respondent would engage in picketing unless the work of installing PCS minicell equipment and related wiring was assigned to employees who were members of, or represented by, Respondent rather than to employees who were members of, or represented by, CWA.

20 Raymond Cass, an employee of Lucent, testified that on April 2 while working at an Italian Restaurant job to swap PCS minicell's with mod-cell equipment, he noticed that Local 98 pickets appeared at the jobsite. Cass came down from the roof and engaged a Local 98 representative in conversation who he identified as Della Vella based on his picture (GC Exh. 16). Cass inquired what Della Vella was doing and he replied, picketing against Lucent for wages and benefits. Cass said we make more money and better benefits. Della Vella replied, 25 provide proof of that and we will stop picketing. During the conversation, Della Vella called Cass a scab and profanities were exchanged between both individuals.

30 On August 31, Cass was assigned to a project on Packer Avenue to replace PCS minicell equipment with mod-cell equipment. He noticed that Della Vella had parked his vehicle in the parking lot, approximately 200 yards away from the jobsite. Someone in a black sports utility vehicle drove onto the jobsite and inquired of Cass what he was doing. Cass informed the unknown individual that he was installing telecommunications equipment on the roof. The individual asked Cass if he had a union card and Cass replied that he was a CWA union employee. The individual said that does not work here. The individual refused to identify 35 himself or answer any of Cass's questions. The individual got back in his automobile and drove over to where Della Vella was standing and engaged him in conversation.

40 Bruce Vancura, an employee of Mack Tech Engineering and Consulting, testified that his company had a contract with Lucent to coordinate the equipment installation at the Packer Avenue jobsite on August 31. He arrived at the jobsite early that morning to await the arrival of the crane operators who were scheduled to remove the old PCS minicell equipment from the roof and hoist up the new equipment. Vancura introduced himself to Della Vella who he identified was the same individual in the picture (GC Exh. 16). He inquired of Della Vella what it would take to get the job done. Della Vella replied that you need licenses and permits to do the 45 job. Vancura learned from the crane operator that Della Vella intended to place an area standards picket on the jobsite. Based on this representation, Vancura sent the majority of the employees' home and no work was completed that day. Vancura acknowledged, however, that Della Vella did not engage in any picketing that day nor did he threaten Vancura that Local 98 would picket the jobsite. Rather, Della Vella stated he would do what he had to do.

50 Joseph Gala, a communications technician and installer for Lucent, testified that he was assigned to the Packer Avenue jobsite on August 31, to upgrade wireless telephone equipment.

He observed that Vancura was talking with an individual who he later learned was Della Vella. Since the conversation became exceptionally loud and confrontational, Gala walked towards the two men. Della Vella recognized Gala and said he was sneaking around the city doing union jobs without following correct procedures and not getting licenses and permits. Della Vella
 5 stated that you guys are a union shop but I don't even recognize your union being a union. Della Vella then stated if you guys are going to go here and work today, I'm going to get the picket signs out of my car. It is noted, however, that Local 98 did not picket the Packer Avenue jobsite that day.

10 Della Vella admitted in his testimony that he did visit the Packer Avenue jobsite on August 31, observed the same employees of Lucent that he saw at the Richmond Avenue jobsite, and remembers talking to someone with whom he exchanged profanities. He denies, however, that he ever told anyone that he would picket the jobsite or that he would do what he had to do.

15 b. Discussion

Della Vella admits that he never inquired of CWA or Lucent to discern the actual wages or benefits that the employees were earning when installing PCS minicell equipment. Moreover,
 20 Gala impressed me as a sincere witness whose testimony has a ring of truth to it. The underlying theme that was expressed throughout the hearing is that Della Vella was upset that the employees of Lucent were doing union jobs in lieu of the work being performed by employees represented by Local 98. Likewise, I fully credit Gala's testimony that Della Vella threatened to get picket signs immediately after he uttered the statement that Gala was
 25 sneaking around the city doing union jobs without getting licenses and permits. Lastly, I note that Della Vella made no mention of area standards picketing or that employees of Lucent were making less than Local 98 represented employees when he engaged Gala in conversation.

30 7. The events of September 29-Packer Avenue

a. Facts

The General Counsel alleges in paragraph 7(d) of the complaint that the Respondent engaged in picketing on September 29, at the Packer Avenue jobsite in support of its demand
 35 for the work in dispute.

Weeks testified that he was assigned to remove PCS minicell equipment from the roof of a building on Packer Avenue on September 29. Upon his arrival at the jobsite, he observed three individuals including Della Vella wearing Local 98 picket signs. Accordingly, the union
 40 represented riggers and crane operators refused to cross the picket line and report for work. Weeks was able to persuade some of the truck drivers along with employees of Lucent to manually push the telecommunications equipment up the steps to the roof and the work was performed and completed that day without the assistance of the union represented crane and rigger employees. Weeks testified to a brief conversation with Della Vella that day wherein they
 45 discussed each others cameras. Della Vella, according to Weeks, stated that his \$5 camera will shut down the job.

Vancura testified that he observed Della Vella on September 29, as one of the Local 98 pickets at the jobsite.

50 Della Vella did not testify about his presence on the picket line at the Packer Avenue jobsite on September 29. There is no dispute, however, that Della Vella engaged in picketing at

the Packer Avenue jobsite on that day.

b. Discussion

5 Based on the testimony of Weeks and Vancura, I find that Local 98 engaged in picketing on September 29, at the Packer Avenue jobsite.

D. Analysis and Conclusions

10 Under Section 8(b)(4)(D) of the Act it is unlawful for a union

(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of its employment to use, 15 manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services: or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is---

20 (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees 25 performing such work.

Based on the above discussion, I find that Della Vella recognized Gala at the Packer Avenue jobsite and said he was sneaking around the city doing union jobs without getting licenses and permits and did not recognize Gala's labor organization. Della Vella then stated 30 that he would get some picket signs out of his car if the employees intended to go to work. Della Vella also referred to CWA represented employees as scabs and informed other employees of Lucent that he did not recognize their labor organization.

The actions of Della Vella in the subject case are strikingly similar to those he undertook 35 in a prior case considered by the Board. Indeed, in *International Brotherhood of Electrical Workers, Local 98 (Total Cabling Specialists, Inc.)* 339 NLRB 470 (2003) that also involved the CWA, Della Vella went on that jobsite and sought to determine whether the contractor had obtained the required permits to perform the ongoing electrical work. In that case, as in the subject case, the Respondent argues that Della Vella's actions were solely limited to ensuring 40 that the proper permits be obtained and any subsequent picketing of the jobsite was to advise the public that the contractor did not pay area standards wages. As discussed above, I find that the threats uttered by Della Vella together with his repeated inquiries whether the Employer obtained electrical permits to perform the work that he attempted to legitimize by area standards picketing, was a transparent excuse for his real purpose, to get the work transferred to Local 98 45 members. Likewise, when asked the reasons for the picketing during the hearing, Hnatkowsky said one of his objectives was to "see our guys do the work." In *United Slate, Tile & Composition Roofers Local 30 v. NLRB*, 1 F.3d 1419, 1424 (3d Cir. 1993), the court stated:

50 The law is clear that a single unlawful objective, even if it accompanies other lawful objectives, is sufficient to make picketing unlawful under the Act. Thus, the issue is not whether Local 30's professed purpose of protesting the perceived area standards violation is supported by the evidence but whether the Board's finding that the

picketing had an unlawful objective even if not the sole objective of seeking the reassignment of the work is supported by substantial evidence on the record as a whole. [Citations omitted]

Here, the evidence is clear that Della Vella by his picketing, induced and encouraged employees of Lucent to refuse to perform services with an object of requiring Lucent to assign the installation of the PCS minicell equipment and related wiring to employees represented by Respondent rather than to employees represented by CWA. Under these circumstances, I find that the Respondent violated Section 8(b)(4)(i)(D) of the Act. Additionally, I find that Hnatkowsky, DeSpechio and Della Vella threatened, restrained and coerced Lucent with an object of forcing them to assign the disputed work to Respondent rather than to CWA. Therefore, the Respondent also violated Section 8(b)(4)(ii)(D) of the Act.

I note that the Board has found in numerous cases that Local 98 has claimed the work in dispute and then engaged in picketing to prevent the Employer's CWA represented employees from performing that work. Indeed, the Board has held that Local 98 has continually demonstrated a proclivity to engage in unlawful conduct in order to obtain work in dispute performed by the subject Employer. This obviously demonstrates that there is a continuing controversy between Local 98 and CWA regarding the Employer's installation of various forms of telecommunications equipment.

Under all of these circumstances, and consistent with the Board's holding in 339 NLRB 470 (2003), I find that a broad cease-and-desist order against the Respondent is warranted based on the violations found in this case.

Conclusions of Law

1. Lucent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Respondent and CWA are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent engaged in violations of Section 8(b)(4)(i)(ii)(D) of the Act by inducing or encouraging any individual employed by Lucent or by any person engaged in commerce to refuse to perform services and by threatening Lucent or any person engaged in commerce that it would engage in picketing to secure the assignment of work installing PCS CDMA minicell equipment to employees who were members of Respondent rather than to employees who were members of, or represented by CWA.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.

Continued

ORDER

The Respondent, International Brotherhood of Electrical Workers, AFL-CIO, Local Union
 5 No. 98, its officers, agents, and representatives, shall

1. Cease and desist from inducing or encouraging any individual employed by Lucent
 Technologies, Inc. or any other person engaged in commerce or in an industry
 10 affecting commerce to engage in a strike or a refusal in the course of his
 employment to use, manufacture, process, transport or otherwise handle or work on
 any goods, articles, materials, or commodities or to perform any services or
 threatening, coercing or restraining Lucent Technologies, Inc. or any other person
 engaged in commerce or in an industry affecting commerce where in either case an
 15 object thereof is forcing or requiring Lucent Technologies, Inc. or any other employer
 to assign work to employees who are members of, or represented by the
 International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 98, rather
 than to employees in another labor organization or in a particular trade, craft or
 class.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 20 (a) Within 14 days after service by the Region, post at its union office in
 Philadelphia, Pennsylvania, copies of the attached notice marked
 "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director
 for Region 4, after being signed by the Respondent's authorized
 25 representative, shall be posted by the Respondent and maintained for 60
 consecutive days in conspicuous places including all places where notices to
 members are customarily posted. Reasonable steps shall be taken by the
 Respondent to ensure that the notices are not altered, defaced, or covered
 by any other material. In the event that, during the pendency of these
 30 proceedings, the Respondent has gone out of business or closed its Union
 office involved in these proceedings, the Respondent shall duplicate and
 mail, at its own expense, a copy of the notice to all current members and
 former members of Respondent at any time since June 13, 2000.
 (b) Within 21 days after service by the Region, file with the Regional Director a
 35 sworn certification of a responsible official on a form provided by the Region
 attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 15, 2005

 Bruce D. Rosenstein

102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed
 waived for all purposes.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the
 notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted
 50 Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the
 National Labor Relations Board."

Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

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Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

10 The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

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WE WILL NOT induce or encourage any individual employed by Lucent Technologies, Inc. or by any other person engaged in commerce or in an industry affecting commerce to use manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to refuse to perform any services where an object thereof is to force or require Lucent Technologies, Inc. or any other employer to assign work to employees who are members of, or represented by International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 98, rather than to employees in another labor organization or in a particular trade, craft or class.

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WE WILL NOT in any manner threaten, coerce, or restrain, Lucent Technologies, Inc. or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Lucent Technologies, Inc. or any other employer to assign work to employees who are members of, or represented by International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 98, rather than to employees in another labor organization or in a particular trade, craft or class.

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International Brotherhood of Electrical Workers,
AFL-CIO, Local Union No. 98

(Labor Organization)

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Dated _____ By _____
(Representative) (Title)

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The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, One Independence Mall, 7th Floor

Philadelphia, Pennsylvania 19106-4404

Hours: 8:30 a.m. to 5 p.m.

215-597-7601.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

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THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 215-597-7643.

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